

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

**CARLA A. CLEHM (formerly
Blankenship),**

Plaintiff,

v.

**BAE SYSTEMS ORDNANCE SYSTEMS,
INC.,**

Defendant.

Civil No. 7:16-CV-0012

**DEFENDANT BAE SYSTEMS ORDNANCE
SYSTEMS, INC.'S RULE 12(B)(6) MOTION TO DISMISS**

Defendant BAE Systems Ordnance Systems, Inc., ("BAE OSI" or "Defendant"), by counsel, hereby moves this Court to dismiss Count II of Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). As discussed more fully in the accompanying memorandum, Plaintiff's assault and battery claim (Count II) should be dismissed pursuant to FRCP 12(b)(6) because, as a matter of law, the conduct alleged by Plaintiff in support of that claim was outside the scope of the alleged tortfeasor's employment, the doctrine of *respondeat superior* is inapplicable, and therefore there is no basis for imposing assault and battery liability upon Defendant for the conduct alleged in Count II.

WHEREFORE, Defendant respectfully requests that this Court dismiss Count II of Plaintiff's Complaint pursuant to FRCP 12(b)(6). Defendant also respectfully requests that this Court award Defendant its attorney's fees and costs for defending this suit and award such other relief as it may deem appropriate.

WOODS ROGERS PLC

/s/ Victor O. Cardwell
Victor O. Cardwell, Esq. (VSB #27747)
cardwell@woodsrogers.com
Thomas M. Winn, III, Esq. (VSB #35758)
winn@woodsrogers.com
P.O. Box 14125
10 South Jefferson Street, Suite 1400
Roanoke, Virginia 24038-4125
Telephone: (540) 983-7600
Facsimile: (540) 983-7711

*Counsel for Defendant BAE Systems
Ordnance Systems, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2016 a true and accurate copy of the foregoing Answer was electronically filed with the Clerk of the Court using the CM/ECF system, and that a true and accurate copy of the foregoing was sent via the CM/ECF system to the following participant:

Terry N. Grimes, Esquire
TERRY N. GRIMES, ESQ. P.C.
320 Elm Avenue, SW
Roanoke, Virginia 24016

/s/ Victor O. Cardwell